D.B. CIVIL SPECIAL APPEAL (W) NO.94/2007
Moola Ram Vs. The District Judge, Pali & Ors.

Date : 18.5.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. N.S. Rajpurohit for the appellant.

_____

We have heard learned counsel for the appellant.

The appellant is unsuccessful candidate at election held for the post of Sarpanch of Gram Panchayat Bar, the result of which was declared on 31st January, 2005. The respondent No.2 in appeal was declared elected.

The election petition was preferred by the present appellant inter alia on the ground that the votes should have been recounted and that the elected candidate was guilty of exciting religious sentiments for the purpose of securing votes. There were two principal issues framed in the election petition.

After recording the evidence, the learned District Judge, Pali vide his judgment dated 21st April, 2006 dismissed the election petition.

After discussing the evidence on the two issues the learned District Judge found that no case for recounting was made out as there is no cogent and specific evidence to suggest that any request was made for recounting before the declaration of result. There was no specific pleading in the statement. The applicant submitted about making written application but no evidence was led about the said application. In respect of distribution of pemplates, it was also found that election petitioner has failed to prove that pamplates in question were published or distributed by the candidate or by any person closely related to him.

On the basis of aforesaid findings in judgment of the learned District Judge challenged by way of writ petition, the learned Single Judge has refused to interfere in the matter as both the findings according

to him were arrived by him on the due appreciation of evidence and did not call for interference.

Having perused the material placed before us and perused the judgment under appeal and the judgment of the Tribunal we are of the opinion that the learned Single Judge was right in holding that the findings of facts recorded by the Election Tribunal are based on due appreciation of relevant evidence and do not call for interference.

We are in agreement with the conclusion drawn by the learned Single Judge. The learned District Judge had discussed each and every piece of evidence and its conclusion has been on the relevant issues. The fact that the finding has been discussed in earlier part of judgment and the conclusions have been recorded while discussing the issues cannot be considered to sustain the ground that the learned Single Judge has not appreciated the evidence and does not give reason for his conclusions.

In view thereof, this appeal fails and is hereby dismissed. No order as to costs.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

babulal/